

U.S. DISTRICT COURT

N.D. OF N.Y.

FILED

FEB 07 2011

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAWRENCE K. BAERMAN, CLERK
ALBANY

TIMOTHY B DONNELLY

34 Ely Street
Coxsackie, NY 12051

11 -CV- 0135

Plaintiff,

Civil Action No. _____
(Judge's initials)

NAM / DRH

v.

UNITED STATES
C/O U.S. Attorney General
10th and Constitution Ave, N.W.
Washington D.C. 20530

Complaint

Defendant.

COMPLAINT

By these presents, TIMOTHY B DONNELLY, Plaintiff, brings this action to compel the Internal Revenue Service (hereinafter "IRS") to return overpaid income tax withheld in 2008.

JURISDICTION

1. This court has subject jurisdiction over the matter according to Title 26 USC §6511 (a), the U.S. Code of Judicial Procedure, 28 USC §1331 and §1346 (a)(1).
2. Venue jurisdiction is proper according to US Code of Judicial Procedure 28 USC 1391 (e)(3).
Plaintiff resides in the Northern District.
3. Persona jurisdiction is established by proper service to the Defendant.

PARTIES

1. Plaintiff, TIMOTHY B DONNELLY, is a taxpayer residing at 34 Ely Street, Coxsackie New York, 12051.
2. Defendant, UNITED STATES, is the principal for its agent at fault in this action, the IRS.
Accordingly, 28 USC §1331 (a)(1) provides the UNITED STATES is the proper defendant in this case. Respectively, Defendant's address for Service of Process is: U.S. Attorney General, 10th and Constitution Ave, N.W., Washington, D.C. 20530.

MATERIAL FACTS

1. Plaintiff's employer withheld from Plaintiff \$7,496.54 in overpaid income taxes funds for the 2008 tax year; and delivered the same to the IRS.
2. Plaintiff filed a tax return for the 2008 tax year showing said overpayment and requesting the return of said overpaid income taxes.
3. Over six months have passed since the IRS received said return.
4. The IRS has failed to return said overpaid funds.

CAUSE OF ACTION

1. The IRC 26 USC 6401, 6402, and 6532 provides that when a tax return shows an overpaid tax is due to the taxpayer, the IRS is required to return the overpaid funds within 6 months.
2. The IRC 26 USC 6532 provides that if the IRS fails to timely return claimed overpaid taxes the taxpayer can seek remedy from this court.
3. Defendant failed to timely return said overpaid taxes.

RELIEF REQUESTED

Plaintiff requests the Court award Plaintiff the following relief:

- a. Order Defendant to return the overpaid taxes, with interest.
- b. Order Defendant to pay Plaintiff's reasonable fees associated with the creation of this action.
(Post office fees, travel expenses, time off from work, etc.)

Dated: February 7, 2011

TIMOTHY B DONNELLY
Plaintiff
34 Ely Street
Coxsackie, New York 12051
(518) 444- 8430

